

[Note: For privacy reasons, Grievant's name has been redacted from Internet copies as of 2-5-07]

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

BLUE CROSS AND BLUE SHIELD  
UNITED OF WISCONSIN

and

OFFICE AND PROFESSIONAL EMPLOYEES  
INTERNATIONAL UNION, LOCAL NO. 787,  
AFL-CIO, CLC

Case 4  
No. 54090  
A-5486

Appearances:

Foley & Lardner, by Ms. Ann I. Mennell, on behalf of the Company.

Murphy, Gillick, Wicht & Prachthausen, by Ms. Sandra K. Graf, on behalf of the Union.

ARBITRATION AWARD

The above-entitled parties, herein "Company" and "Union", are privy to a collective bargaining agreement providing for final and binding arbitration before a three-person panel. Pursuant thereto, I was chosen panel chair and Dan Willett and Rassandra Cody were respectively chosen by the Union and Company. Hearing was held in Milwaukee, Wisconsin, on June 10, 1996. The hearing was transcribed and both parties filed briefs which were received by August 16, 1996. Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Whether grievant [R.R.] was fairly evaluated for his performance review and, if not, what is the appropriate remedy?

BACKGROUND

The Company, a large insurer, maintains an office in Milwaukee, Wisconsin. Grievant [R.], a Senior Clerk in the Micrographics Department, was employed there between June 1, 1976,

to the end of February, 1996, when he resigned, during which time he received very good annual evaluations. As Senior Clerk, his primary job was to set up the work flow for about five other operators in the department who film claims.

On April 5, 1995, he received a written evaluation (Joint Exhibit 5) which evaluated his work between September, 1994, to April, 1995, and which awarded him 90.6 points out of a possible 100 points. That Evaluation provided:

	Points Assigned	Points Received	[Percentage of Total Points]
Monitor and/or compile various department reports. Provide this information each day by 8:30 am	20	17.8	89%
Conduct and provide feedback of quality audits in accordance with the micrographics quality control program.	20	20.0	100%
Update department procedures/procedure manual within one week of procedure changes or additions	7	7	100%
Conduct and manage training of staff. Provide quality and productivity information, so that needs of the trainee and course of action can be determined.	8	8	100%
Coordinate and monitor workflow and assign work as needed, to assure maximum utilization of staff	20	17.8	89%
TOTAL	75	70.6	
Competencies - 25 points total	Weight/Points Assigned	Total Points Received	

Job Knowledge and Skill	5	4	80%
Initiative	4	3	80%
Problem Solving	6	5	80%
Communications	4	3	80%
Interpersonal Relationships	3	2.5	80%
Professionalism	3	2.5	80%

He therefore received a total of 90.6 points which placed him in the middle 40% of all employees and which thereby enabled him to receive a .2 percent lump sum bonus under the Company's newly-instituted Profit Sharing Program which is provided for in Article 19.3 of the contract. [R.] testified that he should have received higher points, thereby enabling him to receive \$450 in additional merit pay.

He said he repeatedly asked supervisors over the years for additional training, but that it was always denied and that such lack of training led to lower point totals on his 1995 evaluation. He stated that he should have received higher points for "Monitor and/or compile various department reports" because he met every deadline and because he was never trained on how to correct errors; that he did not receive higher points for "Job Knowledge and Skill" only because he was not properly trained, "but yet I was penalized for it"; and that he received lower points for Initiative because, "I was held back because of the lack of training" even though he was a "self-starter".

He acknowledged that he received cross-training after Christopher J. Guzewicz became his supervisor in 1994. However, he said that such training stopped when Debra Orethun, the person who was cross-training with him, was assigned to a new work task involving Dataplex. [R.] said that he received some cross training after Supervisor Sharon Smith became his supervisor in 1995, but that "It was slow to come" and that: "Shortly after that [1995] review, the rest of [the training] came into effect where I did get totally trained." He testified that no one from management in the months preceding his review ever told him that he was not making maximum utilization of his staff and that he would not be getting the maximum number of points. To the contrary, he said, "I got the impression I would have [gotten more points] because of the compliments I got on how well of a job I was doing by Sharon Smith."

On cross-examination, he acknowledged that Smith was an excellent supervisor; that she kept him informed about what was going on; and that he received a September, 1994, evaluation from supervisor Guzewicz which listed certain performance expectations. (Company Exhibit 1). He said that he received 92, 91.8, and 89.8 points on his prior evaluations (Company Exhibits 2, 3

and 4); that he never grieved them because there was "no monetary value" associated with them; and that the performance expectations and six competencies listed on those prior evaluations were basically the same.

Supervisor Guziewicz, [R.]'s immediate supervisor before Smith, testified that he evaluated (Company Exhibit 1) and spoke to [R.] in September, 1994, about his performance expectations and competencies for the next review period; that he was [R.]'s supervisor during part of the time covered by [R.]'s April, 1995 evaluation; and that he and Smith "developed the reviews together". He explained that in order for [R.] to have received more points, he would have had to finish reports with "no guidance and no assistance", which was not the case, and that he would have had to coordinate and monitor the work flow without any direction, which again was not the case because, "Frequently he would need direction." He also said that [R.] did not receive higher points for Job Knowledge and Skill because he was not "completely versed in every single function in the microfilming."

Guziewicz testified that he instructed [R.] and Orethun to exchange duties for two weeks so that they could become cross-trained, but that "They weren't as successful as I had anticipated" for reasons that were "unclear to me". He added that [R.]'s lack of knowledge regarding the work manager program, Lotus, and forms did not affect his 1995 evaluation.

On cross-examination, he admitted that he did not tell [R.] before evaluating him that he was not working up to par to receive the maximum bonus or that he was dissatisfied with his level of job knowledge. He said he told [R.] that he should increase his Initiative by providing for his own cross-training and that, "I gave him the ability or the freedom to do that cross-training on his own." He explained that [R.] could do so "through managing himself, managing his time, himself, and learning the aspects of the job that he is not knowledgeable in."

Barbara A. Ryan, the micrographics area manager who also signed [R.]'s April, 1995, review, said that Smith was an excellent supervisor. Ryan acknowledged on cross-examination that she did not provide any ongoing coaching or feedback to [R.] and that she told Vicky L. Botos, the Union's Chief Steward, that Orethun worked on reports because she is good with them.

[R.] grieved his evaluation on April 17 and the Company denied it on the ground that "management determined [R.] does not have full knowledge of the Micrographics area that is required of an employe in a senior position."

#### POSITIONS OF THE PARTIES

The Union argues that the Company was unfair in not giving [R.] higher points in his performance expectations for Monitoring and/or compiling reports because it had never properly trained him to perform those tasks and because it did not offer any specific evidence showing that he had not properly coordinated and monitored work flow. It also contends that [R.] should have

earned more points under competencies because the points awarded for Job Knowledge and Skill "is probably the most unjust of all" because [R.] had "always received the maximum number of points in this category in the past", and that, moreover, [R.]'s lack of training led to lower points for "Initiative". The Union contends that "the supervisors did not follow the proper procedure" because they failed to explain to [R.] the proper criteria; because there was no coaching or feedback; and because there was no proper documentation. It further claims that "The expectations were unrealistic and unobtainable."

The Company, in turn, maintains that [R.]'s 1995 review was "substantially and procedurally fair" because it accurately measured his work in various areas. Proof of that, it says, can be seen by the fact that "the review was consistent with his reviews in previous years."

## DISCUSSION

The resolution of this issue centers on Section 19.3 of the contract which states:

[E]mployees shall be evaluated based upon their performance, and those employees who are ranked at the top 33% based upon their performance ratings shall receive a 4% lump sum merit bonus. Those employees who are ranked in the middle 40% based upon their performance ratings shall receive a 2% lump sum merit bonus. Employees who are ranked in the low 27% based upon their performance ratings shall receive no lump sum merit bonus. . .

The starting point in resolving [R.]'s grievance under this language are the prior evaluations he received in 1994, 1992, and 1991 when he received 92.0, 91.8, and 89.8 points. Those point totals are very close to the 90.6 points he received in 1995, thereby showing that his overall work performance - which was very good - remained fairly constant over the last five or so years.

[R.] testified that he did not grieve any of those prior evaluations because he was not then covered under the Company's merit plan and because he therefore could not gain monetarily if he did grieve. That is true. But, the fact remains that he did not grieve those evaluations and that they therefore stand. That being so, it is incumbent upon him to prove that he deserved a higher point total for his 1995 review. Conversely, the Company has the burden of proving that he deserved lower points.

The record shows that he performed the same job duties in the period of his 1995 review as he did in his prior reviews. Hence, he cannot claim that added responsibilities or job duties dictated a higher point total.

He can claim, however, that he was not given sufficient opportunity to cross-train and to learn new skills, as he testified without contradiction that he for about the last ten years repeatedly

asked his supervisors for more training, only to be denied again and again.

The Company's failure to offer such training in the past is inexplicable given the Company's own self-interest in training its employees to the maximum extent possible. Furthermore, the Company now must provide reasonable training opportunities to all employees who request it since the Profit Sharing Program and Article 19.3 of the contract peg merit pay to an employee's overall job performance. For without such training, employees will not have much of an opportunity to improve themselves and to earn as much as possible under the Profit Sharing Program.

The record on this point is murky. [R.] testified that he was finally cross-trained by Smith after he received his April, 1995 review. That, though, occurred after his review and did not affect the size of his 1995 merit raise, which is the central issue here.

[R.] admitted that he had not complied and monitored some reports properly, but asserted that he "was never cross-trained or retrained on how to correct those errors." He also acknowledged that he did not know how to perform all of the duties of a Senior Clerk and that for Problem Solving "a lot of that [i.e., lower points] was because of the fact that I did not have the training. . . I was incapable of solving problems."

This is a difficult issue to resolve because Guziewicz testified that he had offered training to [R.] and that [R.] himself was responsible for carrying out his own training.

I suspect that the truth lies somewhere between these two claims and that [R.] earlier had been denied some of the training he requested, but that he himself could have done more on this score when Guziewicz and Stone became his supervisors during the September, 1994-April, 1995, review period. Thus, there is no evidence that [R.] ever complained to either Smith or Guziewicz that fellow Senior Clerk Orethun was no longer able to cross-train with him because of Dataplex. In addition, he did not reassign some of his own work to others so that he could free up time for training opportunities which Guziewicz testified could be easily done.

If filed earlier, I would probably sustain the grievance because of the Company's past lack of training. However, that situation changed when Smith and Guziewicz became his supervisors in 1994-1995, as the record shows that they provided [R.] with training opportunities. While [R.] did not receive as much training as he would have liked during the September, 1994-April, 1995 review period, I find that the Company acted in good faith and in a reasonable manner and that he himself could have done more on his own initiative. Accordingly, management alone was not totally responsible for his lack of training. Hence, there is no basis for awarding him more points because of a supposed lack of training.

In so finding, it again must be emphasized that the Company has a contractual obligation to provide proper training to all of its employees. Nothing herein should be misconstrued as providing differently. Rather, all that is being decided here is that Guziewicz and Smith finally

provided some of that training, long after [R.] had repeatedly asked for it in the past.

The Union also contends that [R.] was treated unfairly because management did not provide him with sufficient feedback during the period covered by his evaluation.

[R.] admitted, however, that Smith kept him informed and that his performance expectations over the years were "basically" the same, thereby showing that he knew what management expected of him. Guzewicz testified that he provided "informal" feedback and coaching to [R.] and that he had complained to [R.] about his initiative. Given all this, I find that the Company, on balance, did provide [R.] with sufficient feedback.

Lastly, the Union argues that [R.] should be given an additional point for "Job Knowledge and Skill" because he received 5 points for this category in 1995, 1993 and 1992, the most points possible, rather than the 4 points he received in 1995. On this issue, Smith's own notes (Joint Exhibit 5) state that [R.] "his increased his knowledge, within the last three months in areas he was not secure in. . ." The Union thus asks: "If Mr. [R.] had increased his knowledge within the last three months, how then could his review rating go down from prior years?"

That is a very good question. [R.], however, admitted that, "I was kind of held back because of the lack of knowledge on that"; that "I didn't know how to do the reports, so how could I do it?"; and that he did not receive higher points for problem-solving because of "lack of knowledge, lack of knowledge and lack of training." He further stated that Stone had told him he was deficient in his lack of knowledge regarding Dataplex and reporting and that it therefore was unfair to give him lower points for that because training "was denied to me, but yet I was penalized for it." Given this admitted lack of knowledge, there is no basis for awarding him a higher point for this category.

All in all, then, while the Company in the past should have done more in training [R.], its evaluation of his work for the period under review here was conducted in a fair manner and therefore cannot be set aside.

The dissent charges that it is not possible for employees to train themselves because: "Employees are told in a myriad of ways that short-term production needs are the top priority and training is a much lower priority."

As stated above, I would sustain the grievance if, in fact, this were true because the Company is contractually required to provide proper training. Here, though, there is no evidence that the Company at the present time actively discourages training. That is why this decision is limited to the narrow facts of this case and why nothing herein should be misconstrued as meaning that the Company need not provide needed training to all employees requesting it. If the Union believes that the Company is not providing such training for other employees, it need only document any such failure and file a grievance. Nothing herein is meant to discourage the Union

from doing so.

The dissent also disagrees with my conclusion that the Company provided [R.] with sufficient informal feedback relating to his work performance during the review period, as it charges that "guidelines calling for regular, monthly feedback during the merit performance review period have been washed out and reduced to 'informal feedback'". The Company's Handbook for Preparing Non-Exempt Performance Reviews ("Handbook") on this issue calls for "Providing ongoing coaching and feedback to employees during the course of the review period." There is nothing in the Handbook which calls for written, formal documentation. The Handbook also stipulates: "The frequency of employee feedback should be mutually agreed upon between you and your employee at the beginning of the review period." Here, there is no evidence [R.] ever entered into any such agreement with supervision. That being so, there is no basis for finding that "feedback" was required under any particular schedule. In order to avoid future disputes, however, the Union and Company may want to specify how frequently such "feedback" should be provided. At the present time, however, no such schedule exists.

Documentation is another matter. The Handbook states that supervision is responsible for: "Maintaining documentation during the review period on quantity, quality, and other related performance expectations."

Here, there is no such documentation from either Guzewicz or Smith.

In some circumstances, this would be a fatal flaw in the Company's case. Here, though, I am satisfied that [R.] was not prejudiced by the absence of more documentation, as he himself admitted that he was not knowledgeable about all job functions because of his lack of training. Other situations may not be as clear. That is why the Company may be skating on thin ice if it does not properly document an employee's performance during a review.

In light of the above, it is my

#### AWARD

That grievant [R.R.] was fairly evaluated for his performance review. His grievance is therefore denied.

Dated this 6th day of January, 1997.

Rassandra Cody /s/  
I concur.

Amedeo Greco /s/  
Amedeo Greco

Daniel Willett /s/



I dissent.

I respectfully dissent from your decision on Case 4, No. 54090 A-5486 ([R.R.] Grievance). I disagree with the conclusion that employees are responsible for planning and obtaining their own training. This was not, and is not, possible at Blue Cross & Blue Shield United of Wisconsin. Employees are told in a myriad of ways that short-term production needs are the top priority and training is a much lower priority. Given the setting, Mr. [R.] performed admirably in requesting training over a protracted period of time. At the least, given Mr. [R.]'s history of frustrated attempts to obtain training, Mr. Guzewicz should have offered to personally reassign some of Mr. [R.]'s work to others in order to free him up for training rather than putting it on Mr. [R.] to make his own training happen. I disagree with the conclusion that Mr. [R.] did not use the opportunity for training that Mr. Guzewicz gave him.

I also disagree with the precedent of the decision which permits the Company to provide "informal" feedback to employees during merit performance review periods. Part of our discontent with the Company on merit performance reviews is the Company's imposition of administrative guidelines to be followed. With this decision we learn that the Company does not even have to follow its own administrative guidelines - guidelines calling for regular, monthly feedback during the merit performance review period have been washed out and reduced to "informal" feedback. This increases the vulnerability of our members to subjective, incorrect evaluations and decreases Company liability to the impact of those subjective, incorrect evaluations.